

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1273

B
P/S

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 76-1273

UNITED STATES OF AMERICA,

APPELLEE,

V.

JON GREGORY MARKS,

APPELLANT.

APPENDIX TO BRIEF OF APPELLANT
JON GREGORY MARKS

RICHARD S. CRAMER
ASSISTANT FEDERAL PUBLIC DEFENDER
450 MAIN STREET
HARTFORD, CONNECTICUT 06103
ATTORNEY FOR APPELLANT



PAGINATION AS IN ORIGINAL COPY

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18:922(a)(1) & 924 unlicensed firearms dealing 1
Peter C. Dorsey Richard Cramer
M. Hatcher Norris, Asst. 450 Main St.
Hartford, Conn.

ARREST INDICTMENT ARRAIGNMENT TRIAL SENTENCE
U.S. Custody or High Risk Defn. & Date Design'd
12/12/75
1st Plea 1/5/76
Final Plea
Trial Set For 5/20/76
Voor Dire 5/24/76
Trial Began 5/25/76
Trial Ended 5/27/76
Disposition 5/27/76
Convicted
Acquitted
Dismissed
Nolled/Discontinued*

Search Warrant	Issued	Return	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
Summons	Issued				PRELIMINARY EXAMINATION OR REMOVAL HEARING		BOND Exonerated To Transferee District
	Served				Waived Not Waived		
Arrest Warrant							
COMPLAINT					Tape No.	INITIAL/No.	Magistrate's Initials
OFFENSE (In Complaint)							

Show last names and suffix numbers of other defendants on same indictment/information		V. Excludable Delay			
DATE	PROCEEDINGS	(a)	(b)	(c)	(d)
1975 12/12	True Bill of Indictment returned by Grand Jury and Filed. Summons to issue.(Clarie,J.)				
12/15	Summons issued in duplicate and with certified copy of the indictment handed US Marshal for service.				
1976 1/5	PLEA of not guilty entered to all counts. Case continued on same bond with amended condition that he reside at 3 Mount Vernon Drive, Apt. D, Vernon Connecticut. CJA 23, Financial Affidavit, filed.(Blumenfeld,J.)				
1/6	Motion To Amend Order For Release on Personal Recognizance, filed.				
1/5	Notice of Readiness, filed by Govt.				
1/9	ORDER, filed.(Blumenfeld,J.)m-1/13/76 Order reconditions of bond. copies to Attys. Norris and Cramer.				
1/5	PLEA of not guilty entered to all counts. Case continued on same bond with amended condition that he reside at 3 Mount Vernon Dr. - Apt. D, Vernon, Conn. CJA 23, Financial Affidavit, filed.(Blumenfeld,J.) (Dup. entry-see above)				
1/19	Jury Assg. List Cal. - Jury selection on 1/27/76.(clarie,J)				
1/26	Notice of Compliance With Standing Order on Discovery, filed.				

CONTINUED

1976	IN PROCEEDINGS to be heard	FILED
1/27	Defendant's Submission of Voir Dire Questions, filed.	
1/27	JURY TRIAL - Voir Dire Questions, filed by Atty. Cramer - 12 Jurors and 1 Alternate impanelled and sworn. Jury excused until notified by Clerk's Office. (Clarie, J.)	
2/23	CHANGE OF PLEA of guilty to count #1 entered. All other counts to be dismissed at time of sentencing. Same bond to continue - Continued for presentence report. (Clarie, J.) Court exh. A, Intention To Enter A Guilty Plea, filed. (Clarie, J.)	
12/17/75	Marshal's executed return filed. (Summons)	
10/15/75	Marshal's executed return filed. (Clerk's Temporary Commitment)	
12/23/75	Certified mail returned marked unknown and filed. (Summons)	
3/31	Court Reporter's notes of Proceedings held on Feb. 23, 1976, filed in Hartford. (Sperber, R.)	
4/14	CJA 23, Financial Affidavit, filed.	
4/22	Court Reporter's Sound Recording of Proceedings held on Jan. 5, 1976, filed in Hfd. (Collard, R.)	
4/22	Court Reporter's notes of Proceedings held on Jan. 5, 1976, filed in Hfd. (Collard, R.)	
4/23	Motion to Withdraw Guilty Plea, filed.	
4/26	Court Reporter's transcripts of Proceedings held on Feb. 23, 1976, filed in Hfd. (Sperber, R.)	
4/27	Endorsement entered and filed on Motion to Withdraw Guilty Plea, "April 26th, 1976. Motion to Withdraw Guilty Plea granted; case assigned at Waterbury on May 20, 1976, for trial. So Ordered." (Clarie, J.) M. 4-27-76. Copies sent to Counsel of Record.	
4/26	Motion to Withdraw Guilty Plea - Granted. Assigned to Case #1 before Judge Murphy, Waterbury, May 20, 1976. Same bond cont'd. (own recog.) (Clarie, J.)	
5/5	Notice of Compliance with Standing Order on Discovery, filed.	
5/5	Notice of Compliance with Standing Order on Discovery, filed.	
5/5	Application for Writ of H.C. Ad Testificandum with Order, thereon, filed. (Clarie, J.) M. 5-5-76. Two copies given to U.S. Marshal and One copy to Public Defender.	
5/10	Court Reporter's Sound Recording of Proceedings held on Feb. 23, 1976, filed in Hfd. (Sperber, R.)	
5/20	JURY TRIAL ^{list} Ready - Jury selection to be held on May 24, 1976. Trial for May 25, 1976. (Murphy, J.)	
5/24/76	JURY TRIAL - Govt. moves to allow Thurl Stalnaker, Law Student Intern to sit at counsel table during trial--motion granted. 42 jurors respond to roll call. Oath on Voir Dire administered. Govt.'s proposed Jury Questions, filed. Court described case to jury. 12 Jurors sworn and impanelled. Jurors remain for selection in other cases. Testimony to begin on May 25, 1976 at 10:00 a.m. (Murphy, J.)	

DATE	PROCEEDINGS
1976	
5/25	<p>JURY TRIAL - 12 jurors present. Deft's. Oral Motion that all Witnesses be Sequestered - Granted. 4 Govt. witness' sworn & testified. Govt. Exhibits #1 & #2, filed. Govt. Exhibit #3 marked for identification. Govt. Exhibits #4-13, filed. 1:59 Govt. Rests. Jury excused. Deft's. Motion For a Judgment of Acquittal - Motion Denied. Deft. sworn & testified. 3:30 recess for the jury. In the absence of the jury the Court discusses testimony to be brought in with offer of proof by Counsel for Deft. 3:45 jury enters courtroom. Continued examination of Deft. Court adjourned until 5-26-76. (Murphy, J.)</p>
5/26	<p>JURY TRIAL continues. Memorandum Support of Deft. Mark's Request For an Entrapment instruction, filed. Deft's. Request to Charge, filed. 12 jurors present. Deft. resumes stand for further testimony. Defense witness #1 sworn & testified. Def. rests at 11:17. Govt. rebuttal witness #1 sworn & testified. Govt. exhibit #14, filed. Govt. rests at 11:30. Jury excused. Deft's. Motions previously made renewed & denied. The Court advises counsel of Rulings on Requests for Charge, Exceptions noted. Govt. counsel informs the Court a witness has been threatened in this case & therefore would not testify. Affidavit of M. Hatcher Norris handed to the Court for in-camera inspection. Jury enters courtroom at 12:48. Summations from 12:49 to 1:42. Court's charge from 1:42 to 2:05. No exceptions to charge noted in Chambers. Indictment and all full exhibits taken to the jury room by the Marshal's & the jury starts to deliberate at 2:07. Note received from the jury at 3:17 marked Court Exhibit #1, marked for identification. Note received from the jury at 3:42 marked Court Exhibit #2, marked for identification. Court's charge on portion requested at 3:43-3:48. Jury returns for further deliberation. Court adjourned in the case at 5:00 p.m. to continue at 10:00 a.m., 5/27/76. (Murphy, J.)</p>
5/27	<p>JURY TRIAL continues. 12 Jurors present. Jurors start to deliberate at 10:00 a.m. Note from jury at 10:25 and reply by the Court sent to the jury room. Court informs the jury the length of time to read portions of testimony requested. Court Exhibits #3,4,5 & 6 marked for identification. Jury returns for further deliberations at 11:28. 12:45-12:47, note from jury read to counsel. Jury enters courtroom at 1:20 P.m. with a verdict of guilty on all counts. Verdict accepted by the Court. Jury polled at request of Deft. 1:25 Jurors excused. DISPOSITION - 6 yrs. impr. on counts #1,2,3,4,5,6,7,9 & 10 to run concurrently with each other, and 5 yrs. on ct. #8 to run concurrently with sentences imposed on other counts. Pursuant to provisions under Title 18 USC Section 3148, because there is danger to community or some members of community the risk is too great to permit freedom or bail & accordingly placed in custody of Attorney Gen. pending appeal. Deft. advised of right to appeal</p>

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

JON GREGORY MARKS

CRIMINAL NO.

11-75-206

FILED
DEC 12 5 06 PM '75
U.S. DISTRICT COURT
HARTFORD, CONN.

I N D I C T M E N T

The Grand Jury charges:

COUNT ONE

That on or about the 10th day of September, 1975, in the District of Connecticut, JON GREGORY MARKS, the defendant herein, wilfully and knowingly possessed a certain firearm, to wit: a Savage 12 gauge short-barreled shotgun, Model 944, Series A, serial number: P-629614, having a barrel length of approximately 11 15/16 inches and an overall length of approximately 24 3/4 inches, which firearm had not been registered to him in the National Firearms Registration and Transfer Record.

In violation of Title 26, United States Code, Sections 5861(d) and 5871.

COUNT TWO

That on or about the 10th day of September, 1975, in the District of Connecticut, JON GREGORY MARKS, the defendant herein, wilfully and knowingly did transfer a firearm, to wit: a Savage 12 gauge short-barreled shotgun; Model 944, Series A, serial number: P-629614, having a barrel length of approximately 11 15/16 inches and an overall length of approximately 24 3/4 inches, in violation of the provisions of Chapter 53 of Title 26, United States Code.

In violation of Title 26, United States Code, Sections 5861(e) and 5871.

COUNT THREE

That on or about the 17th day of September, 1975, in the District of Connecticut, JON GREGORY MARKS, the defendant herein, wilfully and knowingly possessed a certain firearm, to wit: a Sloan 12 gauge short-barreled double barrel shotgun, serial number: 83662, having a barrel length of approximately 12 inches and an overall length of approximately 26 inches, which firearm had not been registered to him in the National Firearms Registration and Transfer Record.

In violation of Title 26, United States Code, Sections 5861(d) and 5871.

COUNT FOUR

That on or about the 17th day of September, 1975, in the District of Connecticut, JON GREGORY MARKS, the defendant herein, wilfully and knowingly did transfer a firearm, to wit: a Sloan 12 gauge short-barreled double barrel shotgun, serial number: 83662, having a barrel length of approximately 12 inches and an overall length of approximately 26 inches, in violation of the provisions of Chapter 53 of Title 26, United States Code.

In violation of Title 26, United States Code, Sections 5861(e) and 5871.

COUNT FIVE

That on or about the 17th day of September, 1975, in the District of Connecticut, JON GREGORY MARKS, the defendant herein, wilfully and knowingly possessed a certain firearm, to wit: a Savage 12 gauge short-barreled shotgun, Model 944, Series A, serial number: P-629608, having a barrel length of approximately 12 inches and an overall length of approximately 18 3/4 inches, which firearm had not been registered to him in the National Firearms Registration and Transfer Record.

In violation of Title 26, United States Code, Sections 5861(d) and 5871.

COUNT SIX

That on or about the 17th day of September, 1975, in the District of Connecticut, JON GREGORY MARKS, the defendant herein, wilfully and knowingly did transfer a firearm, to wit: a Savage 12 gauge short-barreled shotgun, Model 944, Series A, serial number: P-629608, having a barrel length of approximately 12 inches and an overall length of approximately 18 3/4 inches, in violation of the provisions of Chapter 53 of Title 26, United States Code.

In violation of Title 26, United States Code, Sections 5861(e) and 5871.

COUNT SEVEN

That on or about the 10th day of October, 1975, in the District of Connecticut, JON GREGORY MARKS, the defendant herein, wilfully and knowingly possessed a certain firearm, to wit: a Remington 12 gauge short-barreled shotgun with folding stock, Model 870, serial number: S821859V, having a barrel length of approximately 12 1/2 inches and an overall length of approximately 33 1/2 inches, which firearm had not been registered to him in the National Firearms Registration and Transfer Record.

In violation of Title 26, United States Code, Sections 5861(d) and 5871.

COUNT EIGHT

That from on or about the 14th day of July, 1975, to on or about the 10th day of October, 1975, in the District of Connecticut, JON GREGORY MARKS, the defendant herein, not being a federally licensed dealer in firearms, did wilfully, knowingly and unlawfully engage in the business of dealing in firearms without a federal license.

In violation of Title 18, United States Code, Sections 922(a)(1) and 924.

COUNT NINE

That on or about the 10th day of September, 1975, in the District of Connecticut, JON GREGORY MARKS, the defendant herein, wilfully, knowingly and unlawfully did make a firearm, to wit: a Savage 12 gauge short-barreled shotgun, Model 944, Series A, serial number: P-629614, having a barrel length of approximately 11 15/16 inches and an overall length of approximately 24 3/4 inches, in violation of the provisions of Chapter 53 of Title 26, United States Code.

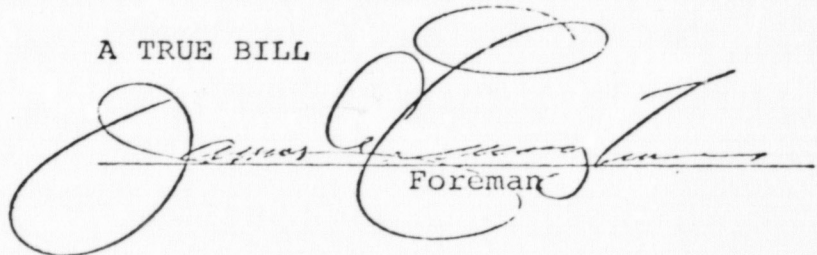
In violation of Title 26, United States Code, Sections 5861(f) and 5871.

6
COUNT TEN


That from on or about the 26th day of September, 1975, to on or about the 10th day of October, 1975, in the District of Connecticut, JON GREGORY MARKS, the defendant herein, wilfully, knowingly and unlawfully did make a firearm, to wit: a Remington 12 gauge short-barreled shotgun with folding stock, Model 870, serial number: S821859V, having a barrel length of approximately 12 1/2 inches and an overall length of approximately 33 1/2 inches, in violation of the provisions of Chapter 53 of Title 26, United States Code.

In violation of Title 26, United States Code, Sections 5861(f) and 5871.

A TRUE BILL


Foreman

PETER C. DORSEY
United States Attorney


M. HATCHER NORRIS
Assistant United States Attorney

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1 that are charged in the indictment, made the
2 weapons that are charged in the indictment,
3 transferred the weapons that are charged in the
4 indictment and dealt with the four weapons,
5 Government Exhibit 1, 2, 4 and 11, not being a
6 federally licensed dealer in firearms, he knew very
7 well that he was breaking the law. He had every
8 intention of committing a criminal act, and the
9 agents most certainly in light of all the testimony
10 here, I submit to you, did nothing to implant that
11 criminal intent in his mind. The defendant was
12 merely afforded the opportunity to do what he wanted
13 to do, sell some weapons and make some money.

14 I submit to you in light of this
15 evidence there is only one verdict that you can
16 reach, and that is guilty to all ten counts of the
17 indictment.

18 Thank you very much for your attention
19 throughout the trial, through closing arguments,
20 and I now leave the Government's case of the
21 United States versus John Gregory Marks in your
22 hands.

23 THE COURT: Ladies and gentlemen, I'm
24 sure that you can agree with me that this has been
25 a relatively short case, and I think an interesting

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1 one. I'm sure you know too that whether a case is
2 short and interesting or long and dull it's always
3 an important case because it is a criminal case,
4 and the criminal case is important to the defendant
5 and to the Government. And oddly enough, the most
6 important part of the case is the part that you
7 people are going to play in a short while because
8 you are going to decide whether this defendant,
9 Mr. Gregory Marks, is guilty or not guilty on each
10 of ten separate charges.

11 I suggest to you that you decide those
12 issues of guilt or innocence according to the oath
13 that you took on Monday. You recall that you
14 promised us through the Clerk that you will well
15 and truly try the issues joined in this case and
16 a true verdict render, and I submit that you cannot
17 arrive at a true verdict if for one moment you
18 permit any kind of an emotion to enter into your
19 thinking or your deliberations, and by emotions
20 I mean emotions like sympathy or bias or prejudice.
21 I'm sure you know that when you are trying to
22 decide an important matter at home or in business,
23 if you let emotions sneak into your thinking
24 processes, then you always make the wrong decision.
25 So I suggest that to be true to your oath, you

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1 decide the case coldly and analytically according
2 to the evidence that you heard and saw in the
3 courtroom, and in that way justice will be done
4 and that is all anybody asks for or all that anybody
5 is entitled to.

6 Now, one of the obligations that you
7 have as you promised me under oath was that you
8 would accept from me the law as I give it to you
9 and not apply your own concepts of what the law is
10 or what it should be. On the other hand, you are
11 the sole and exclusive judges of the facts in the
12 case, and not only that, but it is your recollection
13 of the testimony that controls, not my recollection
14 or the lawyers' recollection, but yours alone.

15 Now, Mr. Marks has been indicted by a
16 Grand Jury in this District. That indictment was
17 filed on December 12th of last year, and it contains
18 a number of counts. I'm sure you know that an
19 indictment is only an accusation. It is the
20 physical means by which a defendant is brought to
21 trial and its sole purpose is to identify the
22 defendant's alleged offenses. It is not evidence
23 that the offenses charged were committed, and it
24 may not be considered by you as evidence during
25 your jury deliberations.

40

1
2 Now, to that accusation or those
3 accusations the defendant has previously pleaded
4 not guilty, and under our system once a person who
5 is accused of a crime is presumed to be innocent
6 from the moment he is accused, during all of the
7 time it takes from that moment to the trial to get
8 underway. The presumption stays with him during
9 the trial and the presumption stays with him not
10 only during the trial, but during your jury
11 deliberations until such time if the time arrives
12 when you are satisfied that the Government has
13 proved his guilt beyond a reasonable doubt.

14 Now, I am not going to read the whole
15 indictment to you again, but I am going to say
16 that the way it is drawn up it can easily be
17 divided so that you can understand the various
18 counts. Counts 1, 2, 3, 4 and 5 each relate to a
19 different weapon. One, the odd numbered counts
20 refer to the possession charge, and the even
21 numbered counts refer to the transfer charge. So
22 you have count 1 as the possession charge, count 3
23 as a possession charge, count 5 as a possession
24 charge, and count 2 as a transfer charge, count 4
25 as a transfer charge, and count 6 as a transfer
charge, and so is count 7. In other words, count --

41 1 no. Count 7 is a possession charge. So you have,
2 in effect, four possession charges and three
3 transfer charges.

4 Count 8 is a charge that accuses the
5 defendant of engaging in the business of dealing in
6 firearms, and count 9 and 10 each refer to the
7 making of a firearm.

8 Now, you will notice when you read the
9 indictment, and you will have the actual indict. at
10 in the jury room with you, that each of the counts
11 1 through 10 all have the words "knowingly" and
12 "intentionally" in them.

13 Now, an act is done intentionally when
14 it is done with the specific intent to do that
15 which the law forbids. That is to say with a
16 bad purpose either to disobey the law or to dis-
17 regard the law.

18 The purpose of adding the word
19 "knowingly" was to make sure that no one would be
20 convicted because of an act done due to a mistake
21 or inadvertence or some other innocent reason or
22 cause.

23 Intention and knowledge of a defendant
24 need not be proved by direct evidence. Like any
25 other fact in the case, it may be established by

42 1 circumstantial evidence.

2 Now, since it is not possible to look
3 into a person's mind to see what went on, you decide
4 the issue of criminal intent from the evidence of
5 acts and conduct and circumstances and the reasonable
6 inferences to be drawn from them. What a man does
7 is more often indicative of his intent to commit an
8 offense rather than what he says.

9 Now, as I told you, these counts can be
10 divided so that you can in your discussion analyze
11 them from a possession point of view or transfer
12 point of view, a making point of view, and the
13 last one, the doing of business as is charged in
14 count 8.

15 Now, I will explain the various elements
16 that are necessary for the Government to prove
17 beyond a reasonable doubt with regard to each of
18 the types of crimes that are alleged; namely, I
19 will give you the necessary elements that the
20 Government must prove beyond a reasonable doubt
21 with regard to the possession charges, and I will
22 give you the necessary elements the Government has
23 proved beyond a reasonable doubt with regard to the
24 transfer charges, and I will do the same thing
25 with regard to the charges alleging the making of

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1 firearms and, lastly, with regard to the engaging
2 in the business of dealing in firearms.

3
4 Now, Congress has defined the word
5 "firearm" which is used in all of these counts as
6 a shotgun having a barrel or barrels of less than
7 18 inches in length. Congress has said that it is
8 unlawful for any person to possess a firearm which
9 is not registered to him in the National Firearms
10 Registration and Transfer Record.

11 And now with those two definitions
12 in mind, the essential elements that the Government
13 must prove beyond a reasonable doubt with reference
14 to counts 1, 3, 5 and 7, the possession counts,
15 are (1) that the defendant at the time and place
16 charged in the indictment knowingly possessed the
17 shotgun described in each of those counts with a
18 barrel less than 18 inches in length; and secondly,
19 that such shotgun at the time and place charged
20 was not registered to the defendant in the National
21 Firearms Registration and Transfer Record.

22 Now, the Government has introduced in
23 evidence a Certificate of the Custodian of the
24 National Firearms Registration and Transfer Record
25 to the effect that he has made a diligent search
and has found no record of any firearms described

44 1 in the indictment being registered to the defendant.
2 You may accept this Certificate as evidence that
3 the shotgun as described in counts 1, 3, 5 and 7 of
4 the indictment were not registered to the defendant,
5 but you are not obliged to do so. It is up to you
6 to determine what evidence you will accept and what
7 evidence you will reject.

8 Now, with reference to the transfer
9 counts, namely, counts 2, 4 and 6, Congress has
10 passed a law which says it shall be unlawful for
11 any person to transfer a firearm in violation of
12 a particular statute, and that statute says it shall
13 be unlawful for any person to transfer a firearm
14 except in pursuance of a written order from the
15 person seeking to obtain such article on an
16 application form issued in blank and in duplicate
17 for that purpose by the Secretary of the Treasury
18 or his delegate.

19 So the essential elements that the
20 Government must prove beyond a reasonable doubt with
21 reference to counts 2, 4 and 6, the transfer counts,
22 are (1) that the defendant at the time and place
23 charged in the indictment wilfully and knowingly
24 transferred the shotgun described in each of those
25 counts with a barrel less than 18 inches in length;

45 1 and secondly, that the transfer of such firearm
2 was in violation of the statute, which I just read
3 to you about transferring it only pursuant to a
4 written order on the application form issued by
5 the Secretary of the Treasury or his delegate.

6 Now, with reference to counts 9 and 10,
7 that is the making of a firearm, Congress has
8 provided it shall be unlawful for any person to
9 make a firearm in violation of a certain federal
10 law which requires among other things the registra-
11 tion of the firearm that is made and on the form
12 prescribed by the Secretary of the Treasury or his
13 delegate.

14 Accordingly, the essential elements
15 that the Government must prove beyond a reasonable
16 doubt with reference to counts 9 and 10 are (1)
17 that the defendant at the time and place charged
18 in the indictment wilfully and knowingly did make
19 the firearm described in each of those two counts;
20 and secondly, that the making of said firearm was
21 in violation of the requirement that I just read
22 relating to the registration on the official form
23 prescribed by the Secretary of the Treasury or his
24 delegate.

25 And now in connection with the remaining

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1 count, count 8, Congress has passed a law which
2 provides it shall be unlawful for any person other
3 than a licensed dealer to engage in the business of
4 dealing in firearms. Now, the essential elements
5 with regard to this crime which the Government must
6 prove beyond a reasonable doubt are (1) that the
7 defendant at the times and places charged in
8 count 8 wilfully and knowingly did engage in the
9 business of dealing in firearms; and (2) that the
10 defendant was not a federally licensed dealer in
11 firearms during the times charged in that count.

12 Now, the Government has introduced in
13 evidence another Certificate, Exhibit No. 13,
14 which is the Certificate of the supervisor,
15 Firearms and Explosive Licensing Section, Regulatory
16 Enforcement, Bureau of Alcohol, Tobacco and Firearms
17 to the effect that she has made a diligent search
18 and has found no record of either an executed or
19 a filed application for a firearms license under
20 Chapter 44 of Title 18 of the United States Code
21 in the name of John Gregory Marks.

22 You may as I said with regard to the
23 other certificate accept this certificate as
24 evidence that on the date set forth in count 8 of
25 the indictment John Gregory Marks was not a

47 1 federally licensed dealer in firearms, but you are
2 not obligated to accept it. You may accept it or
3 reject it as you deem right.

4 Now, one of the big issues in this
5 case is the issue of credibility. I saw a play
6 many years ago on Broadway called "A Cat On A Hot
7 Tin Roof." Maybe you saw it too. I think there
8 was a movie with Elizabeth Taylor in it. And in
9 the Broadway show the principal character was
10 called "Big Daddy", and the plot concerned the
11 decadence of a southern family, and all Big Daddy
12 could say throughout the last act "There's been
13 mendacity here. There's been mendacity." And as
14 you know, mendacity is just a fancy word for lying,
15 and I submit to you that there has been lying in
16 this courtroom for two days, and your job is to
17 find out who is telling the truth. Nobody that I
18 know has come up with a mechanical way or means
19 of deciding where the truth lies. Nobody has
20 invented a slide rule or a caliper for measuring
21 credibility, but everybody seems to agree that you
22 do it according to your own God given common sense.
23 You know when you are a jury man or jury woman
24 you come here and you bring with you your common
25 sense. You don't leave it home. So I suggest

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1 to you that you apply your good God given common
2 sense in order to determine credibility of each
3 and every witness. Did any witness have a reason
4 for lying? Was his memory as good as he said it
5 was? Did they have an interest in the result of
6 the trial? You determine all these things, as I
7 said, by applying your own good common sense, and
8 if you find that any person, any witness testified
9 to a material fact falsely, then you are at liberty
10 to disregard that testimony or you can accept what
11 you believe and reject what you don't, or if you
12 wish, you can reject that witness' testimony
13 completely and in its entirety.

14 Now, the defendant here has a defense
15 that he was entrapped into these crimes and,
16 therefore, he cannot be convicted. If you find
17 that the defendant was entrapped, then you must
18 find him not guilty of all of the crimes charged
19 in the indictment. Entrapment occurs only when the
20 criminal conduct was the product of the creative
21 activity of law enforcement officials. The function
22 of law enforcement is the prevention of crime and
23 the apprehension of criminals. Manifestly, that
24 function does not include the manufacturing of
25 crime. Criminal activity is such that stealth

1 and stratagems are necessary weapons in the arsenal
2 of police officers. However, a different question
3 is presented when the criminal design originates
4 with the officials of the Government and when they
5 implant in the mind of an innocent person the
6 disposition to commit the alleged offense and induce
7 its commission in order that they may prosecute.
8 This stealth and strategy becomes as objectionable
9 as a police method such as coerced confessions or
10 unlawful search. Congress never intended that its
11 statutes were to be enforced by tempting innocent
12 people into violations. However, the fact that
13 the Government merely affords opportunity or
14 facilities for the commission of an offense doesn't
15 constitute entrapment. To determine whether
16 entrapment has been established a line must be
17 drawn between the trap for the unwary and the
18 innocent and the trap for the wary criminal. It
19 must be obvious, therefore, that your examination
20 will be the determination of the issue of fact:
21 was the defendant entrapped? In considering that
22 issue bear in mind that the burden is on the
23 defendant to adduce some evidence that a Government
24 agent by initiating the illegal conduct himself
25 induced the defendant to commit the offense. If

1 you find that the defendant has adduced such
2 evidence, then the Government must prove beyond a
3 reasonable doubt that the inducement was not the
4 cause of the crime, that is, that the defendant was
5 ready and willing to commit the offense.

6 The defendant also has as another
7 defense the defense of coercion. Now, coercion or
8 compulsion may be a legal defense for all of the
9 crimes charged in this indictment. In order,
10 however, to provide a legal defense for any criminal
11 conduct, the compulsion must be present. It must
12 be immediate and of such a nature as to induce a
13 well founded fear of impending death or serious
14 bodily injury, and there must be no reasonable
15 opportunity to escape the compulsion without
16 committing the crime or participating in its
17 commission. If the evidence in this case should
18 leave you with a reasonable doubt, whether at the
19 times and places of the alleged offenses the
20 accused acted willingly and voluntarily, that is
21 to say, whether the accused was forced, in effect,
22 to commit the crimes charged in the indictment by
23 coercion or compulsion as I have explained it, then
24 you must acquit the defendant.

25 Now, the defendant here has taken the

51

1 stand in his own behalf. I'm sure you know that
2 under our system a defendant need not testify if he
3 wishes. He is under no obligation to prove anything.
4 The obligation to prove his guilt is always on the
5 Government throughout the entire trial. The
6 defendant, however, who testifies has a deep personal
7 interest in the prosecution and that interest should
8 be considered by you. Interest, as you know, creates
9 a motive for false testimony, and the greater the
10 interest, the stronger the motive. Bearing in mind
11 I am not saying that because a person has an
12 interest in the case that they are incapable of
13 telling a straight-forward and candid and truthful
14 story because if that was so, no defendant would
15 ever have a chance in court. You know as well as
16 I do that it is possible and frequently happens
17 that a person who has an interest can tell a
18 straight-forward and honest story, but I repeat,
19 the question of credibility of each witness,
20 including all of the Government witnesses and the
21 defendant and his witnesses is in your entire
22 control and your responsibility.

23 And now throughout my charge and the
24 lawyers' summations we all have been using the
25 phrase "reasonable doubt". It must be obvious to

52 1 you that in all criminal cases the burden is on the
 2 Government to prove the guilt of a defendant by
 3 what is called proof beyond a reasonable doubt, and
 4 that burden, as I say, remains on the Government
 5 and never shifts to a defendant.

 6 Now, what is reasonable doubt? It is a
 7 doubt based upon reason which arises from the
 8 evidence or lack of evidence. A reasonable doubt
 9 is not a vague or an imaginary or speculative doubt,
 10 but it is such a doubt as to cause a good man or
 11 woman to hesitate before acting in matters of
 12 importance to themselves.

 13 Now, under your oath as jurors one of
 14 the things that you cannot do, assuming that you
 15 arrive at a verdict of guilt, is to consider or
 16 discuss the question of possible punishment. The
 17 question of punishment of a person who is convicted
 18 of a crime belongs on the conscience of the Court
 19 and on nobody else's conscience. The lawyers have
 20 their job to do. They do it by presenting the
 21 evidence to the best of their ability. You have
 22 your job to do, that is, to decide the facts to
 23 the best of your ability; and my job is to run the
 24 court and pass on questions of law, and in the
 25 event of a verdict of guilty, to impose punishment.

53

1 So let us not encroach on each other's job.

2 And now one more word and I will have
3 done. If you find that the law has not been violated
4 as charged, you should not hesitate for any reason
5 to return a verdict of not guilty. On the other
6 hand, if you find that the defendant has been proved
7 guilty beyond a reasonable doubt, say so, and do
8 not hesitate because of any emotion such as sympathy
9 or bias or prejudice.

10 I am sure you know that when you do
11 retire to your jury room, you elect one of your own
12 members as Foreman or Forelady, and he or she will
13 monitor or be your supervisor during your delibera-
14 tions and then represent you when you return a
15 verdict in court.

16 I'm sure you know that your verdict
17 must be unanimous on each count.

18 Now, I have to speak to the lawyers for
19 a few minutes and the rules say I must do it in
20 your absence, so would you excuse us for just a
21 short time.

22 (The following transpired in chambers)

23
24 THE COURT: Mr. Cramer, do you have any
25 exceptions?

1 please.

2 BY MR. CRAIGER:

3 Was there any attempts after that to collect
4 money from you by Mr. Duggan?

5 A Yes. Mr. Duggan felt --

6 THE COURT: No or yes would answer the ques-
7 tion.

8 MR. CRAIGER: I'm not sure he answered the
9 question.

10 THE WITNESS: Yes. Mr. Duggan made numerous
11 attempts to collect his money.

12 THE COURT: To collect the money that you
13 guaranteed, you mean?

14 THE WITNESS: To collect what he felt was the
15 contractual obligation.

16 THE COURT: Did he hire a lawyer?

17 THE WITNESS: No, your Honor. He did not.

18 BY MR. CRAIGER:

19 Q Did you contact a lawyer?

20 A Yes. I did. I contacted Mr. --

21 THE COURT: The answer is "yes".

22 Q Who was the lawyer you contacted?

23 A It was Dick Spear of 100 Constitution Plaza. He
24 is also known to me.

25 THE COURT: No. Please. Don't give us a

1 whole life history. You gave us the name of the
2 lawyer and his address. If counsel wants any
3 more information about the man, he will ask you.

4 Q Were you able to resolve this debt with Mr. Duggan?

5 A No. I was not.

6 Q Did he make any suggestion to you how you should
7 pay off this debt?

8 A Mr. Duggan stated that I was obligated to him and
9 that I had better get the money or else.

10 Q Well, did he tell you how you could raise the
11 money?

12 A I offered to liquidate --

13 THE COURT: No. The question was: Did Mr.
14 Duggan tell you how you could raise the money?

15 THE WITNESS: Mr. Duggan did make an offer,
16 yes.

17 THE COURT: Did he tell you, the question
18 was, how to raise the money? That was the ques-
19 tion.

20 THE WITNESS: No. He did not tell me how
21 to raise the money.

22 THE COURT: That answers the question
23 perfectly.

24 Q Did he suggest to you how you could pay off the
25 debt?

1 A Yes. He suggested that I could liquidate some
2 unneeded personal property as well as my office equipment.

3 Q Did you attempt to sell your personal property?

4 A Yes. I did.

5 Q Were you successful?

6 A No. I was not.

7 THE COURT: What personal property did you
8 attempt to sell?

9 THE WITNESS: I attempted to sell numerous
10 items that I had.

11 THE COURT: No. What was the personal
12 property that you attempted to sell?

13 THE WITNESS: I attempted to sell some tools
14 which I had left over from my service station
15 as well as the two hand guns that are on the top
16 of the board over there.

17 BY MR. CRAMER:

18 Q Did Mr. Duggan ever take possession of any of
19 the hand guns that you see on the board there?

20 A Yes. He did.

21 Q Could you tell the ladies and gentlemen of the
22 jury when that occurred?

23 A Yes. That occurred when he told me --

24 THE COURT: First identify the guns, then
25 tell us when it was.

1 THE WITNESS: My recollection is that there
2 were prosecution Exhibits 1 and 2 there, the two
3 guns on the top of the board, the hand guns.

4 THE COURT: The two hand guns?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: Thank you. And when was it that
7 he took them from you?

8 THE WITNESS: I'm not specific on the dates.

9 THE COURT: No. Approximately.

10 THE WITNESS: It was -- I want to be absolutely
11 sure about this.

12 THE COURT: No. Approximately will do.

13 THE WITNESS: This would have been about two
14 and a half to three weeks after the definite fall-
15 through of our business venture. Two to three
16 weeks after Memorial Day.

17 BY MR. CRAMER:

18 Q What did he say he was going to do with the guns?

19 MR. NORRIS: Objection, your Honor. Hearsay.

20 MR. CRAMER: Well, I think it goes to the
21 state of mind.

22 THE COURT: Yes, to the state of mind if
23 his state of mind at that time is relevant to the
24 issues here, I will agree. Is it going to be
25 relevant to the issues?

1 MR. CRAMER: Yes, it is. I think it will be
2 clear in the next two or three questions.

3 THE COURT: We will allow it.

4 THE WITNESS: Mr. Duggan said that he could
5 liquidate them through a friend who is the
6 bartender at the Holiday Inn in Meriden.

7 BY MR. CRAMER:

8 Q Now, about this time were there any threats from
9 Mr. Duggan directed towards you?

10 A Mr. Duggan directed an implied threat to me.

11 THE COURT: No. Just tell us what the thing
12 was that he said, and then the jury will decide
13 whether it was a threat or an implied threat.

14 THE WITNESS: Oh, all right.

15 THE COURT: See, just tell us what he said.

16 THE WITNESS: Mr. Duggan said that unless
17 I made a sign of good faith, those were his
18 exact words, that my associate and also my close
19 friend, Tom Conway, would end up at the bottom
20 of the elevator shaft in the building where Arthur
21 Howe was working.

22 MR. NORRIS: Your Honor, I object and move
23 to strike that answer and object to this whole
24 line of questioning as being irrelevant.

25 MR. CRAMER: Your Honor --

1 THE COURT: Counsel represents that it is
2 going to be relevant soon.

3 MR. NORRIS: I realize that he said a number
4 of questions ago he was going to tie it up and
5 still hasn't.

6 THE COURT: He is a member of the Bar like
7 you are and I must accept his representations.

8 BY MR. CRAMER:

9 Q Did you feel that Mr. Duggan was serious when he
10 made this threat?

11 A I certainly did.

12 Q Did, in fact, Mr. Conway work at the Murray Rome
13 Building in Hartford?

14 A Yes. He was employed by Mr. Howe.

15 Q Now, was this threat made just before you handed
16 over the guns to him?

17 A Yes. It was.

18 THE COURT: I thought you said he took the
19 guns. You mean you handed the guns to him?

20 THE WITNESS: Yes, I did, your Honor.

21 Q And what was the purpose of giving him the guns?

22 A He indicated that he could sell them that evening
23 and that he would return with the receipts from the sale.

24 Q What did he say to you he had to do with the money
25 from the sale of the guns?

1 A He was going to credit it against my supposed
2 obligation to him.

3 Q Now, you stated -- well, I withdraw that question.
4 At the meeting on July 14, 1975 --

5 THE COURT: What date in July?

6 Q On July 14, 1975 did Mr. Duggan say anything
7 during your discussions with Mr. Pulaski?

8 THE COURT: Well, the man's name is Weronik,
9 I think.

10 MR. CRAMER: I am using the term that he
11 understood him to be, your Honor.

12 THE COURT: Now he know that he is not that
13 name. You can say the man that you knew as Mr.
14 Pulaski.

15 Q Did he say anything during this meeting with Mr.
16 Weronia?

17 A Yes. He made the introduction to the gentlemen.

18 Q What did Mr. --

19 THE COURT: Tell us what he said.

20 THE WITNESS: I don't think I could quote him
21 directly.

22 THE COURT: No. Nobody can remember that far
23 back. In substance, he said what?

24 THE WITNESS: "This is the person who I
25 showed the guns to yesterday, and he said that he

1 THE COURT: And that was how much? You can't
2 recall what that amount was?

3 THE WITNESS: I really can't.

4 THE COURT: And then?

5 THE WITNESS: Then Rich without offering,
6 without actually completing the payment took the
7 two guns away from us and put them in his car and
8 two seconds later all these guys swarmed around
9 the cars with guns drawn, and then we were
10 arrested when we found out who they were.

11 MR. CRAMER: I have no other questions at
12 this point, your Honor.

13 THE COURT: Ladies and gentlemen, we will
14 take a short recess now.

15 (Whereupon, the jury left the courtroom.)

16 THE COURT: All right, Mr. Cramer.

17 MR. CRAMER: My offer of proof, your Honor,
18 would be that --

19 THE COURT: Just tell me what the witness
20 will testify to.

21 MR. CRAMER: He would testify that he was
22 coerced by Mr. Duggan to sell guns.

23 THE COURT: No, counsel. We are talking
24 about something else. You said he had to get some
25 money from X and that's when counsel objected

1 because you were going to say "What kind of
2 trouble did you have with X?" Now we are talking
3 about the same matter, are we? Is that the offer
4 of proof?

5 MR. CRAMER: Yes.

6 THE COURT: Tell me again. He would testify
7 that who is X again?

8 MR. CRAMER: Richard Duggan.

9 THE COURT: Duggan.

10 MR. CRAMER: He would testify that he was
11 threatened by Mr. Duggan and that if he did not
12 pay the debt, he would suffer serious physical
13 consequences, serious harm, physical injury, and
14 it was under this compulsion as well as the
15 compulsion of the acts of the agents which
16 propelled him to sell the guns.

17 THE COURT: But it's the compulsion of the
18 agents, that is your defense in this case, is it
19 not?

20 MR. CRAMER: I would raise that as an entrap-
21 ment.

22 THE COURT: Are you claiming that it was sort
23 of a secret employee of the Treasury?

24 MR. CRAMER: I don't know that because -- I
25 don't know that. Whether he was or not, if he

1 coerced the individual to commit the particular
2 act --

3 THE COURT: That wouldn't be the Government.

4 MR. CRAMER: But it would be coercion. I
5 think coercion could come from a private party.

6 THE COURT: But entrapment is when the
7 Government makes you commit the crime.

8 MR. CRAMER: It wouldn't relate to entrap-
9 ment though. I would think that it would show
10 he was not ready and willing in a voluntary sense
11 if there was an outside source, and I also think
12 that it would be relative to the defense of
13 coercion.

14 THE COURT: You mean he was forced to do
15 these things because Mr. Duggan threatened him
16 with dire consequences if he didn't pay back the
17 money?

18 MR. CRAMER: Unless he paid the money and
19 sold the guns to pay the money.

20 THE COURT: Do you have something to support
21 that?

22 MR. CRAMER: Well, his testimony.

23 THE COURT: No. I mean some cases like the
24 Supreme Court.

25 MR. CRAMER: No. I don't. There are very

1 few cases on coercion. I researched this once
2 before. There are only three or four cases.

3 THE COURT: Give me one.

4 MR. CRAMER: I think the case is United States
5 versus Shannon, and I don't have the citation, your
6 Honor.

7 THE COURT: Is it a District Court case?

8 MR. CRAMER: Well, I can't say that. I'm not
9 sure of the citation.

10 THE COURT: And what do you think the holding
11 is?

12 MR. CRAMER: The holding is that if one
13 commits a crime because of fear for his life or
14 serious bodily harm and has no alternative other
15 than commission of the particular act, then that
16 is a defense to the commission of the particular
17 act.

18 THE COURT: Doesn't someone who coerces have
19 to be either part of the Government or in a state
20 case the People or employed by them?

21 MR. CRAMER: No, your Honor. I'm certain of
22 that, but I can't cite a case. The case that most
23 strikes in my mind was a case involving some
24 kidnapers and a group of the kidnapers said they
25 were coerced by the other kidnapers and they w

1 point.

2 THE COURT: Do you have your notes there?

3 MR. CRAMER: No. I don't. I was having my
4 secretary type up my jury instructions and they're
5 back at my office in Hartford.

6 THE COURT: But you did the research some time
7 ago?

8 MR. CRAMER: I did it some time ago.

9 THE COURT: You don't have your notes on it?

10 MR. CRAMER: No. I'm sorry.

11 THE COURT: Well, I'm not too satisfied that
12 it is a defense in this case, although perhaps
13 the coercion of the agents is another question.
14 I'm not too sure. Shall I take a look and see
15 what I can find? Shannon, you think it's a
16 Supreme Court case?

17 MR. CRAMER: I'm just not certain.

18 THE COURT: Well, can we agree on a spelling?

19 MR. CRAMER: S-H-A-N-N-O-N.

20 THE COURT: Let's give it a try.

21 (Whereupon, court recessed at 3:35 p.m. and
22 reconvened at 3:45 p.m.)

23 THE COURT: I'm going to permit counsel to
24 explore that. I didn't find the Shannon case, but
25 I found some other cases on coercion and, of

1 course, I will have to charge the jury as to what
2 coercion is and how much you have to prove. I
3 don't suppose you prepared a charge on coercion?

4 MR. CRAMER: I did, your Honor. It's being
5 typed in my office now.

6 (At this time the jury entered the courtroom.)

7 THE COURT: All right, counsel, please.

8 BY MR. CRAMER:

9 Q Mr. Marks, during the course of these gun sales
10 to --

11 THE COURT: No. Counsel, you said you only
12 had one question left, and I now ruled on that
13 question and permitted you to explore it according
14 to your offer of proof. Is that the last subject
15 matter?

16 MR. CRAMER: I just wanted to preface the
17 question for the jury's benefit.

18 THE COURT: Preface the question or give a
19 statement?

20 MR. CRAMER: Well, I will ask the question.

21 THE COURT: Yes. Fine.

22 BY MR. CRAMER:

23 Q In September of 1975 did you receive any threats
24 from Richard Duggan?

25 A September? All right.

1 MR. NORRIS: Your Honor, I object to the
2 question. I think it's up to the jury to determine
3 what is a threat.

4 THE COURT: Yes. I think so. I think you
5 should tell us what happened between you and Mr.
6 Duggan in late September or early September or
7 whatever the time is.

8 THE WITNESS: He was not threatening at that
9 point, but rather, he was still very persistent
10 in getting his money. He was very much avoiding
11 us because he feared Hank and Rich.

12 BY MR. CRAMER:

13 Q Well, was there a time before any of the sales of
14 the guns where he made statements to you which you felt
15 obligated you to sell the guns?

16 A Well, he was the person who was responsible for
17 the introduction, and he said initially he was going to
18 sell the guns. He was going to -- he took them from me and
19 he said that he would handle the transaction, and then
20 something changed his mind and he came back and he said
21 that rather than having him handle the transaction that it
22 would be better for me to handle it personally.

23 Q Well, did he say what he would do if you didn't
24 sell the guns?

25 A He said that if we didn't get him some money through

1 these sales that our lives were in danger.

2 MR. CRAMER: I have no other questions.

3 THE COURT: Cross?

4 CROSS-EXAMINATION

5 BY MR. NORRIS:

6 Q Mr. Marks, when you first met Agent Weronik on
7 July 14, 1975, you didn't know he was a federal agent, did
8 you?

9 A No. I did not.

10 Q In fact, you just thought he was a bartender?

11 A Oh, all right. We are talking --

12 Q Yes or no?

13 A -- about Rich. Yes. All right. I was confused
14 as to which one you were talking about.

15 Q Showing you what has been marked as Government
16 Exhibit 1 I ask you is this the .25 caliber automatic that
17 Agent Weronik said that you sold to him?

18 A Yes. It is.

19 Q And did you, in fact, sell it to him?

20 A Yes. I did.

21 Q And now showing you Government Exhibit 2, is this
22 .38 caliber revolver one that you sold to Agent Weronik
23 on July 14, 1975?

24 A Yes. It is.

25 Q Now, you heard his testimony that he paid you two

1 Q About how much of this debt did you owe?

2 A Half of it. Twenty-five hundred dollars.

3 Q Did you make any payments on the debt?

4 A Yes, sir.

5 Q During the summer of 1975 did Gregory Marks ever
6 express a fear of Richard Duggan to you?

7 A Yes, sir.

8 Q Do you recall what he said?

9 A Yes. He said that --

10 THE COURT: Would you tell us what it was?
11 Did you fix a time?

12 MR. CRAMER: The summer of 1975, your Honor.

13 THE WITNESS: He said that I had been
14 threatened, that Richard Duggan had come to him
15 and said that I was in the Murray Rome Building
16 and that unless some money was paid as a sign of
17 good faith, I think were the words, I would be
18 thrown down an elevator shaft.

19 THE COURT: I thought the question was: Did
20 he ever tell you that he had been threatened?

21 MR. CRAMER: I think he is getting to that.

22 THE WITNESS: Then the first part wasn't
23 responsive then, I guess.

24 MR. CRAMER: Well --

25 THE COURT: He has told us about what Mr.

1 Marks told him, that his life was in danger.

2 Didn't you ask him whether Mr. Marks said to him
3 that he had been threatened, Mr. Marks?

4 BY MR. CRAMER:

5 Could you clarify that, Mr. Mark. --

6 THE COURT: Answer the question, please,
7 responsively, if you can.

8 THE WITNESS: Yes. He said that Mr. Duggan
9 also indicated that the same could happen to him.

10 Q The same as you described could happen to him?

11 A Yes.

12 Q Were those his exact words?

13 A Those were Mr. Marks' exact words, yes.

14 Q Did you, in fact, work at the Murray Rome Building?

15 A Yes. I did.

16 Q How frequently did you see Mr. Marks during the
17 summer of 1975?

18 A Quite frequently. Three, maybe as many as five
19 times a week.

20 Q Where do these meetings usually occur?

21 A Normally in his office.

22 Q Where was that?

23 A 20 Raymond Road, West Hartford.

24 Q What kind of business was this that he had?

25 A It was a promotion agency.

1 THE COURT: Both sides rest?

2 MR. CRAMER: Pardon me. I'm sorry, your
3 Honor.

4 THE COURT: Both sides rest?

5 MR. CRAMER: May I have just one minute to
6 talk to my client?

7 Defendant rests, your Honor.

8 THE COURT: Ladies and gentlemen, I am going
9 to talk to the lawyers now in your absence for a
10 few minutes and then we will have summations.
11 I don't think we will be too long anyways.

12 (The jury left the courtroom at this time.)

13 THE COURT: Do you have a motion? Do you
14 make the same motions that you made before?

15 MR. CRAMER: Yes, your Honor.

16 THE COURT: And those motions are renewed
17 and denied with exception.

18 MR. CRAMER: Exception, your Honor.

19 THE COURT: Now, tell me, gentlemen, how
20 long you wish for summations? I will talk to
21 you in a minute about the requested instructions.
22 Since you speak first, how long?

23 MR. NORRIS: Well, your Honor, perhaps my
24 length will depend on whether the court has
25 decided on whether it intends to give an entrapment

1 charge in this case.

2 THE COURT: I am. Yes.

3 MR. NORRIS: In that case, I anticipate
4 total summation time approximately half an hour,
5 forty minutes.

6 THE COURT: Counsel, you make your choice
7 and I will hold you to whatever you say. Forty?

8 MR. NORRIS: Forty minutes.

9 MR. CRAMER: I suspect fifteen, twenty
10 minutes.

11 THE COURT: Outside? Now, I will hold you
12 to it. Twenty minutes on the outside?

13 MR. CRAMER: Yes.

14 THE COURT: All right. Now, if you would
15 look at your requested instructions I will go
16 over them with you.

17 With regard to the Government instructions,
18 do you have them?

19 MR. NORRIS: Yes, your Honor.

20 THE COURT: Why don't you sit down because
21 I'm going to be very brief with all of them. I
22 have read these instructions and I'll follow them
23 substantially, and the only one that I have some
24 trouble with is the -- you don't have them
25 numbered, but it's entitled The Weight of

1 Defendant's Testimony if Defendant Testifies.

2 MR. NORRIS: I have it.

3 THE COURT: I am going to charge on that, but
4 I am going to quote almost exclusively from a
5 Supreme Court case, Regan against the United
6 States, 157 U.S., 301 at 304, 5 and 10, 1895;
7 and I am going to charge entrapment substantially
8 as both people have asked me, but a little bit
9 different. I'll read it to you now so you will
10 understand the difference.

11 It is the defendant's defense that he was
12 entrapped into committing these crimes and,
13 therefore, he cannot be convicted. If you find
14 that the defendant was entrapped, then you must
15 find him not guilty of all of the charges con-
16 tained in the indictment. Entrapment occurs
17 only when the criminal conduct was the product
18 of the creative activity of law enforcement
19 officials. The function of law enforcement is
20 the prevention of crime in the apprehension of
21 criminals. Manifestly, that function does not
22 include the manufacturing of crime. Criminal
23 activity is such that stealth and stratagems are
24 necessary weapons in the arsenal of police
25 officers. However, a different question is

1 presented when the criminal design originates with
2 the officials of the Government, and when they
3 implant in the mind of an innocent person the
4 disposition to commit the alleged offenses and
5 induce their commission in order that they may
6 prosecute, this stealth and strategy becomes
7 as an objectionable police method as coerced
8 confessions or the unlawful search. Congress
9 never intended that its statutes ought to be
10 enforced by tempting innocent people into
11 violations. However, the fact that the Govern-
12 ment merely affords opportunity or facilities
13 for the commission of the offense does not
14 constitute entrapment. To determine whether
15 entrapment has been established a line must be
16 drawn between the trap for the unwary and the
17 innocent and the trap for the wary criminal. It
18 must be obvious, therefore, that your examination
19 will be the determination of the issue of fact:
20 Was the defendant entrapped? In considering that
21 issue bear in mind that the burden is on the defen-
22 dant to adduce some evidence that a Government
23 agent by initiating the illegal conduct himself
24 induced the defendant to commit the offense. If
25 you find that the defendant has adduced such

1 evidence, then the Government must prove beyond
2 a reasonable doubt that the inducement was not the
3 cause of the crime, that is, that the defendant
4 was ready and willing to commit the offense.

5 And you don't have anything on coercion which
6 is one of the defenses unless I missed it. Do
7 you, Mr. Norris?

8 MR. NORRIS: No, I don't, your Honor.

9 THE COURT: Yes. All right. Now, with
10 regard to the defendant's request -- oh, you
11 added a rather recent request to charge called
12 impeachment.

13 MR. NORRIS: Yes, your Honor, in light of
14 my rebuttal.

15 THE COURT: Yes. I'm not going to charge it
16 not because it's not accurate, but I don't think
17 it is involved in the case. The jury can deter-
18 mine the credibility without getting into this
19 question of Latin expressions and impeachment.
20 But anyway, you have an exception.

21 MR. NORRIS: Thank you, your Honor.

22 THE COURT: And with regard to the defendant's
23 requests, I am going to follow them in substance,
24 but much, much shorter and not as repetitious and
25 with the exception that I told you about the

1 Regan case on the credibility of the defendant,
2 and if you are familiar with that case, I tell
3 the jury that he has an interest greater than
4 anybody who testified, but I am not going to
5 discuss a great deal of the testimony. In fact,
6 none of the testimony, if I can help it. And so
7 I will not cover some of your requests that does
8 go into the various facts of the case as far as
9 the testimony of witnesses, and I told you what
10 I am going to say about entrapment and coercion.
11 I am going to say a little bit more than you have,
12 but substantially what you have, and I am not
13 going to repeat number 7 on Page 7 since I am
14 going to tell the jury about reasonable doubt and
15 what the elements of the crime are throughout the
16 charge.

17 But in any event, each of you have an excep-
18 tion to what I have just told you for failing to
19 charge as you specifically requested in writing,
20 and then, of course, you can take exception at
21 the close of the charge in chief.

22 Shall we take a few minutes or shall I tell
23 the jury to go to lunch so you have one continuous
24 play?

25 MR. NORRIS: I would rather have it continuous,

1 your Honor, summations and then instructions
2 rather than a break in between.

3 THE COURT: Is that your desire too?

4 MR. CRAMER: I would agree with that, your
5 Honor. May I take exception now?

6 THE COURT: I gave them to you.

7 MR. CRAMER: Well, I wanted to object to
8 failure to give certain instructions.

9 THE COURT: You have an exception to all
10 that I told you I will not give.

11 MR. CRAMER: Oh, I'm sorry.

12 THE COURT: And you have exception after the
13 charge in chief or an opportunity to except to
14 the charge in chief.

15 MR. CRAMER: Thank you, your Honor.

16 THE COURT: Do I have your permission to have
17 the clerk tell the jury to go to lunch now and
18 not to speak to anybody or should I do it myself?

19 MR. CRAMER: You have my permission.

20 MR. NORRIS: You have my permission, your
21 Honor.

22 THE COURT: Would you do that, please, tell
23 them we are going to sum up and charge after
24 lunch and they go now and be back at quarter to
25 1:00. We will all be back at quarter at 1:00.

1 (Whereupon, it recessed at 11:40 a.m. and
2 reconvened at 1:45 p.m.)

3 MR. NORRIS: Your Honor, there is one matter
4 I wish to bring to the court's attention prior to
5 the jury being brought in, and I am doing this at
6 the direct order of the United States Attorney,
7 Peter C. Dorsey. A matter has come to my atten-
8 tion which is of grave concern to the United States
9 Attorney, and I believe that it is of grave con-
10 cern to the court. It goes to the heart of our
11 judicial process. We have information that a
12 witness under a lawful order to testify in this
13 case under subpoena has been intimidated, has
14 been threatened. As a result of this threat and
15 intimidation has not testified in this court, has
16 not responded.

17 THE COURT: Are you suggesting that a witness
18 who is under subpoena did not appear?

19 MR. NORRIS: That's correct, your Honor, and
20 that the reason for this non-appearance was because
21 the witness felt that his life might be in jeopardy
22 and he was in fear of immediate bodily harm.

23 THE COURT: Isn't there some provisions of
24 law that you can present to the Grand Jury that
25 would overcome that?

9
1 And he has presented to you basically two defenses,
2 the defense of an entrapment and the defense of
3 coercion.
4

5 Now, both of these defenses are
6 recognized by the law, and I anticipate His Honor
7 will instruct you on how you should apply that law.
8 Now, it makes common sense that the law provides
9 that the Government cannot take an innocent person,
10 plant a criminal intent in their mind, and then
11 when they do the criminal act, come out and
12 prosecute them. That is entrapment. It's taking
13 advantage of an innocent person. And, obviously,
14 what you look at is what we call pre-disposition.
15 Was the person pre-disposed to commit a criminal
16 act of this nature?

17 Now, the law also states that if a person
18 is ready and willing to commit a criminal act and
19 merely waiting for an opportunity to commit that
20 act and the law enforcement authorities provide
21 that opportunity, that is not entrapment. It is
22 the actual implanting of the criminal intent in his
23 mind that this individual would never have been
24 disposed to do this act had it not been for the
25 conduct of the agents involved.

And likewise, on the coercion defense

10 1 presented by the defendant, the law recognizes that
2 if someone commits a criminal act under the
3 immediate threat of infliction of serious bodily
4 harm, that should be taken into consideration.

5 Well, let's look at that threat. The
6 only evidence presented before you was from the
7 defendant that there was a threat by a Mr. Richard
8 Duggan. He did call Thomas Conway to the stand
9 to confirm this threat, except Mr. Conway got on
10 the stand and said his only knowledge of the threat
11 was from the defendant. So, basically, we have one
12 source for that threat.

13 And on the entrapment, well, the
14 defendant has testified that he had the weapons and
15 he really didn't know the man was a law enforcement
16 authority. There was really no convincing involved.
17 If the price was right, he was waiting for the
18 opportunity to sell the weapons to dispose of some
19 personal property, and he sold them. The law
20 enforcement authority didn't beat him. They didn't
21 force him to do the acts so charged in here. But
22 he says "I thought they were organized crime. I
23 was scared of them." He wasn't too scared to sell
24 weapons like these to organized crime, at least
25 believing that each one of these weapons would be

17 1 slanted his testimony in any way to give me an
2 impression that he wants to give me rather than
3 giving me the facts? Because as a jury, you are the
4 trier of fact. It is not the attorneys, it is not
5 His Honor. You are the trier of fact. The facts
6 are presented through evidence to you and you make
7 the determination what to believe and what not to
8 believe.

9 The defendant said he was coerced.
10 However, he made nine phone calls to the agents.
11 Agent Moniz testified that on two occasions he
12 told John Marks, "I don't want to buy any more guns."
13 More guns were sold. Agent Weronik testified that
14 John Marks was discussing automatic weapons in lots
15 of six or eight. In fact, Thomas Conway confirmed
16 that with his testimony. He said "Yes. There was
17 discussion of automatic weapons." Discussions of
18 a lot of things. You heard discussion of marijuana
19 came up in the testimony and Agent Weronik testified
20 that John Marks told him concerning a lot of shot-
21 guns that he would deliver the shotguns in two
22 pieces. Agent Weronik described the stock and the
23 receiver in one piece and at a different time the
24 barrel, and his testimony under oath was that the
25 defendant stated that in this procedure he would

19 1 before you. Photographs as any other exhibit is
2 evidence for you to consider.

3 And also considering frame of mind of
4 the defendant and in the light of the entrapment
5 defense and in view of the innocent person being
6 duped or coerced by law enforcement authorities,
7 remember the statement that the defendant made to
8 Agent Weronik when he sold him Government Exhibit
9 No. 2, a 38 caliber revolver. He said "Be careful
10 handling those bullets. They're coated with
11 cyanide." He wants you to believe that he is an
12 innocent party that the Federal Government has
13 mis-handled and that he is not appropriately here,
14 he should be acquitted.

15 It is also the testimony of Agent Moniz
16 that he said that he would consider using one of
17 the sawed-off shotguns in a murder, robbing places,
18 and that he would use it. No comment from the
19 defendant when he stated this. No comment whatsoever.
20 He was selling weapons. He would keep selling
21 weapons. He didn't know they were agents. As far
22 as he was concerned, these people were going to do
23 what they said they were going to do. They were
24 going to commit crimes with them, maybe use them
25 to kill somebody, and he kept cutting them down,

1 could say, "Well, we have some doubts. We think he
2 may be guilty.", but some lingering doubt remains
3 and that lingering doubt is based upon some rational
4 basis, you must find him not guilty, and that holds
5 true in each and every count. It is not sufficient
6 that you think it is more likely than not he is
7 guilty. You have to decide if there is any doubt
8 remaining in your mind, and as I said, he concedes,
9 we don't take issue of the fact that he did the
10 acts alleged in the indictment. What we are talking
11 about in this particular case, as the Government
12 pointed out, the Prosecution pointed out is the two
13 defenses that he raises, one of coercion and the
14 other of entrapment.

15 First of all, he claims he was coerced
16 in committing these particular offenses. He talks
17 about a discussion with a Mr. Duggan. Mr. Duggan
18 said that "If you don't sell the particular guns,
19 if you don't pay me the money, then serious harm
20 is going to come to you." Well, undoubtedly, you
21 only have Mr. Marks' testimony as to that particular
22 fact. You have to judge his demeanor on the stand,
23 the way he approached it and the way he spoke in
24 making your decision whether he is telling you the
25 truth. But keep in mind also that you heard the

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1 testimony of Mr. Conway and Mr. Conway told you
2 about remarks that Mr. Duggan related to him. He
3 told you about his fears, Mr. Marks' fears of
4 Richard Duggan. Now, it's hard to believe that
5 way back in last summer of 1975 Mr. Marks is
6 fabricating a fear of Mr. Duggan. If he expressed
7 a fear of Mr. Duggan to Mr. Conway, I think it is
8 reasonably certain that he did have that fear, and
9 if he was motivated out of that fear to sell the
10 first two hand guns, Government Exhibits 1 and 2,
11 and the other guns because there was a subsequent
12 threat by Mr. Duggan, then that is a defense, if he
13 had no other alternative, if he had nothing other
14 to do than to comply with the orders of Mr. Duggan.

15 Of course, the defense of coercion
16 includes the element you could have gone elsewhere,
17 you could have gone to the police or run away. But
18 Mr. Marks and Mr. Conway have explained to you that
19 they felt there was no out. Maybe that was a poor
20 decision. Maybe objectively as we sit here in this
21 passive courtroom we can say "Oh, there was a way
22 out." But think of yourselves in their position
23 at that point in time.

24 The first two hand guns were sold, that
25 we know, on July 14th. Those guns are not the

1 you find that the defendant has adduced such
2 evidence, then the Government must prove beyond a
3 reasonable doubt that the inducement was not the
4 cause of the crime, that is, that the defendant was
5 ready and willing to commit the offense.

6 The defendant also has as another
7 defense the defense of coercion. Now, coercion or
8 compulsion may be a legal defense for all of the
9 crimes charged in this indictment. In order,
10 however, to provide a legal defense for any criminal
11 conduct, the compulsion must be present. It must
12 be immediate and of such a nature as to induce a
13 well founded fear of impending death or serious
14 bodily injury, and there must be no reasonable
15 opportunity to escape the compulsion without
16 committing the crime or participating in its
17 commission. If the evidence in this case should
18 leave you with a reasonable doubt, whether at the
19 times and places of the alleged offenses the
20 accused acted willingly and voluntarily, that is
21 to say, whether the accused was forced, in effect,
22 to commit the crimes charged in the indictment by
23 coercion or compulsion as I have explained it, then
24 you must acquit the defendant.

25 Now, the defendant here has taken the

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1 but not that they received the bag itself, and
2 that is the Government's explanation.

3 THE COURT: Well, I don't comment on
4 the evidence, but --

5 MR. NORRIS: Yes. I realize that.

6 THE COURT: The Court Reporter took
7 down what you said.

8 (Court recessed at 3:20 p.m. and
9 reconvened at 3:42 p.m.)

10 THE COURT: Gentlemen, I have another
11 note from the jury that reads: "We would like to
12 have the law as to entrapment and coercion (sic)
13 again.", unsigned, and I assume or hope that that
14 is the request of the jury as distinguished from a
15 juror. But I am going to bring the jury in and
16 give them what they want. Do you have something to
17 say?

18 MR. CRAMER: I have no objection to
19 that.

20 THE COURT: Do you have any objection?

21 MR. NORRIS: No objection, Your Honor.

22 THE COURT: Would you bring them in,
23 please?

24 THE MARSHAL: Yes, Your Honor.

25 (The jury entered the courtroom at this
time.)

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1 THE COURT: All right. Thank you,
2 ladies and gentlemen. I have a note which reads:
3 "We would like to have the law as to entrapment and
4 coercion (sic) again." It's not signed by anyone,
5 and I hope it is the request of the entire jury, but
6 in any event, here is what I said about those two
7 subjects.

8 One of the defendant's defenses is that
9 he was entrapped into committing these crimes and,
10 therefore, he cannot be convicted. If you find
11 that the defendant was entrapped, then you must
12 find him not guilty of all of the crimes charged in
13 the indictment.

14 Entrapment occurs only when the criminal
15 conduct was the product of the creative activity of
16 law enforcement officials. The function of law
17 enforcement is the prevention of crime and the
18 apprehension of criminals. Manifestly, that
19 function does not include the manufacturing of
20 crime. Criminal activity is such that stealth and
21 stratagem are necessary weapons in the arsenal of
22 police officers. However, a different question is
23 presented when the criminal design originates with
24 the officials of the Government and when they
25 implant in the mind of an innocent person the

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1 disposition to commit the alleged offense and induce
2 its commission in order that they may prosecute.
3 This stealth and strategy becomes as an objectionable
4 a police method as coerced confessions or the
5 unlawful search. Congress never intended that its
6 statutes were to be enforced by tempting innocent
7 people into violation. However, the fact that the
8 Government merely affords opportunities or facilities
9 for the commission of the offense does not constitute
10 entrapment.

11 To determine whether entrapment has been
12 established a line must be drawn between the trap
13 for the unwary and the innocent and the trap for
14 the wary criminal. It must be obvious, therefore,
15 that your examination will be the determination
16 of the issue of fact: Was the defendant entrapped?
17 In considering that issue bear in mind that the
18 burden is on the defendant to adduce some evidence
19 that a Government agent by initiating the illegal
20 conduct himself induced the defendant to commit
21 the offense. If you find that the defendant has
22 adduced such evidence, then the Government must
23 prove beyond a reasonable doubt that the inducement
24 was not the cause of the crime, that is, that the
25 defendant was ready and willing to commit the

1 offense.

2 The defendant, as I said, also has the
3 defense of coercion. Coercion or compulsion may be
4 a legal defense for the crimes charged in the
5 indictment. In order, however, to provide a legal
6 defense for any criminal conduct the compulsion must
7 be present and immediate and of such a nature as to
8 induce a well founded fear of impending death or
9 serious bodily harm, and there must be no reasonable
10 opportunity to escape the compulsion without commit-
11 ting the crime or participating in the commission
12 of the crime. If the evidence in the case should
13 leave you with a reasonable doubt whether at the
14 time and place of the alleged offenses the accused
15 acted willingly and voluntarily, that is to say,
16 whether the accused was forced, in effect, to commit
17 or aid in the commission of the crime charged in
18 the indictment by coercion or compulsion as I have
19 explained, then you must acquit the defendant.

20 And that I believe, ladies and gentlemen,
21 is what I said on both of those subjects. So you
22 may now retire again, if you will.

23 (The jury left the courtroom at 3:50 p.m.
24 and court recessed.)

25 (Court reconvened at 5:00 p.m.)

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1 it at all, and then "III What was Marks" and then
2 a caret "first testimony about going to see his
3 friend in . . .", and then above the next line is
4 the phrase " . . . West Hartford", and then below
5 that " . . . the Police Department?", and the same
6 undecipherable signature.

7 Then next in a different handwriting --
8 in fact, that is all printed -- it says "Does the
9 term coercion" and this time it's spelled correctly,
10 "apply only", and that's underscored with three
11 lines, "to 'Government by force' or can it apply
12 as threats or force by others than the Government?"
13 and that is signed by a name that looks like the
14 last name. Anyway, the initial is J and it's
15 B-i-r-or B-e-r-o-n, or some name like that. But the
16 Marshal tells me that when he received this, he
17 said to the Foreman, "You better sign it." So I have
18 a name on the bottom, Theodore -- and it looks like
19 Krol, K-r-o-l, Foreman. That's probably right.

20 Now, I have some ideas of my own, but
21 I will hear counsel's.

22 MR. NORRIS: Could we have an opportunity
23 to look at the note, Your Honor?

24 THE COURT: (Hands document)

25 All I hear is silence.

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1 MR. NORRIS: Well, Your Honor, there are
2 a number of questions there. I imagine on the first
3 one about the testimony --

4 MR. CRAMER: The first question was
5 concerning July 14th - September 4th, the frequency
6 of the phone calls that --

7 MR. NORRIS: That would be, I guess,
8 that the Stenographer would have to search out the
9 testimony of Mr. Marks and Mr. Conway on that issue.

10 THE COURT: You are keeping silent or --

11 MR. CRAMER: I agree with that. I agree
12 that is the issue and I would request that be done.

13 THE COURT: Any more comments?

14 MR. NORRIS: Well, Your Honor, I have
15 problems with -- I believe it was the last question
16 on coercion. I believe that perhaps the best thing
17 to do, and my suggestion would be, that the Court
18 instruct the jury that "I have told you what the
19 law is on coercion. If you want it read again, I
20 will read it again." Perhaps the suggestion would
21 be to read it again, but I have trouble with
22 answering the specific question, not any trouble in
23 giving them the law on coercion again.

24 MR. CRAMER: My response is, Your Honor,
25 I think that is an important issue and it is obviously

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1 troubling the jury.

2 THE COURT: Counsel, don't characterize
3 anything by being important. I told the jury in
4 the beginning that everything is important in a
5 criminal case.

6 MR. CRAMER: I understand. I would ask
7 that that instruction be re-read with an explanation
8 that it also concerns coercion by private individuals.

9 THE COURT: And you have no comments on
10 the other two items?

11 MR. CRAMER: Well, on the first --

12 THE COURT: The other two items.

13 MR. CRAMER: The other two items, on
14 the September 4th meeting I would ask that a transcript
15 be made of that testimony and be presented to the
16 jury.

17 THE COURT: Of whom?

18 MR. NORRIS: That would be Mr. Marks and
19 Mr. Weronik, the September 4th meeting.

20 THE COURT: It doesn't say September 4th.
21 It says "The first September meeting".

22 MR. CRAMER: I think the testimony was
23 that was the meeting, September 4th.

24 THE COURT: Only two people present.

25 MR. NORRIS: That is correct.

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MR. CRAMER: That is correct, Your Honor.

THE COURT: And the next: "What was Marks first testimony about going to see his friend in the West Hartford Police Department?"

MR. CRAMER: Of course, that would be solely Mr. Marks' testimony, and I would request that that be made available to the jury.

THE COURT: Do either of you have any feeling at all that these are individual requests of individual jurors or do you think that they are the collective jurors asking for this testimony or asking these questions in different requests?

MR. NORRIS: It is the feeling of the Government that those are requests of individual jurors.

THE COURT: That is my feeling.

MR. NORRIS: That is my concern.

MR. CRAMER: I think they may be requests of the jury as a group with one particular individual advocating and the others agreeing.

THE COURT: That is the rub, as Shakespeare once said.

Are you also familiar with some cases to the effect that we don't have to give them any of this re-reading of testimony? Are you, Mr. Norris?

1 MR. NORRIS: Yes, I am, Your Honor.

2 THE COURT: Are you?

3 MR. CRAMER: Yes, Your Honor.

4 THE COURT: Well, I think what I am
5 going to do first is to write a note back asking
6 whether these questions and requests are the
7 requests and questions of the jury as distinguished
8 from individual jurors, and I will first find that
9 out. Do you have any objections to that procedure?

10 MR. NORRIS: No, Your Honor.

11 MR. CRAMER: No. I don't, Your Honor.

12 THE COURT: Thank you. Let me try to
13 draft it.

14 I have drafted this little reply, "I
15 cannot tell whether the various questions and requests
16 are the questions of the jury as a whole or are the
17 requests and questions of individual jurors. Please
18 advise.", with my initials.

19 Does that cover my problem, do you
20 think?

21 MR. NORRIS: Yes, Your Honor. No
22 objection.

23 MR. CRAMER: Yes, Your Honor.

24 THE COURT: All right.

25 (Court recessed at 10:40 a.m. and
reconvened at 11:20 a.m.)

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1 (The jury entered the courtroom at
2 this time.)

3 THE COURT: I have the answer to my
4 question by the Foreman and he says "All the jury
5 request these to help expedite their decision.",
6 signed by the Foreman, Mr. Krol.

7 Now, ladies and gentlemen, when I got
8 that note from you I sat down with the Court
9 Reporter and we have been working now for a little
10 over a half hour to try to find what we think you
11 want. I hope you realize it isn't like NBC. We
12 can't play back these things just like they do on
13 television at all. We have to first find them,
14 and the young lady has to go through her notes and
15 read to me what she has and I decide whether this
16 is what you want. And you might be interested that
17 the first question was "We want" or somebody wants
18 "Marks' testimony and Conway's testimony." Well,
19 we have looked at that and it is estimated that
20 that would take, and we have it, two hours to read
21 that.

22 Now, the next question is what transpired
23 at the meeting and you want the testimony of all
24 persons present at that meeting. The lawyers tell
25 me that only two people were present and we have

74 1 end of the trial and I charge the jury as to what
2 the law is, would you accept from me what I say the
3 law is and not apply your own concepts of what the
4 law is or what it should be? Do you have trouble
5 with that?"

6 "MR. BUCHANAN: No, but that might be
7 hard to decide beforehand."

8 "THE COURT: It might be hard to decide?"

9 "MR. BUCHANAN: I can't say now whether
10 I would agree with your interpretation of the law."

11 "THE COURT: Yes. I thought that is
12 what you meant. Would you tell us your name, please?"

13 "MR. BUCHANAN: Bradford Buchanan."

14 "THE COURT: Thank you, sir. Anybody
15 else? Any other questions? Any suggested questions?
16 I will excuse Mr. Buchanan from this case, gentlemen."

17 (Court reconvened at 12:45 p.m.)
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19 THE COURT: Gentlemen, I have a note
20 from the jury which I have already read to the
21 lawyers. It reads: "Please disregard the previous
22 three requests. We" underlined "hopefully resolved
23 them." Signed Theodore Krol, it looks like, K-r-o-l.

24 Gentlemen, why don't you go to lunch
25 and I will hold everything until you come back.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the appellant's brief and appendix to the brief has been hand-carried to the Office of the United States Attorney, 450 Main Street, Hartford, Connecticut 06103, this 4th day of August, 1976.

Richard S. Cramer
Richard S. Cramer